



Image: AHLN Rocinha Favela

Housing Law, Anti-Discrimination Law, and Socioeconomic Inequalities

Juan Carlos Benito Sánchez,
PhD Candidate at
University of Louvain (Belgium)

Setting the context

- *Socioeconomic status* is one of the major constraints preventing access to adequate housing.
- No clear definition in legal scholarship. In sociology:
‘A composite measure that incorporates economic status, measured by income; social status, measured by education; and work status, measured by occupation.’ (Dutton & Levine, 1989)
- Exacerbated by the current commodified and financialised housing paradigm. (UN Special Rapporteur on adequate housing, 2017)

Setting the context

“

States must ensure that housing policies are non-discriminatory and do not increase existing inequalities. [...] Policies and legislation should be designed to bridge inequality gaps and to ensure access to affordable housing for the poor and marginalized [...].

”

(UN Special Rapporteur on adequate housing, 2012, § 17)

I. Non-discrimination on the grounds of socioeconomic status

Non-discrimination and socioeconomic status

- Most international and European human rights instruments include criteria related to socioeconomic status when prohibiting discrimination:

	UDHR	ICESCR	ECHR	Prot. 12 ECHR	ESC 1961	(R)ESC 1996	CFREU
<i>Social origin</i>	✓	✓	✓	✓	✓	✓	✓
<i>Property</i>	✓	✓	✓	✓	✗	✗	✓
<i>Birth</i>	✓	✓	✓	✓	✗	✓	✓

Non-discrimination and socioeconomic status

Economic and social situation

“

Individuals and groups of individuals must not be arbitrarily treated on account of belonging to a certain economic or social group or strata within society. A person's social and economic situation when living in poverty or being homeless may result in pervasive discrimination, stigmatization and negative stereotyping [...].

”

(UN CESCR, General Comment No. 20, § 35)

Non-discrimination and socioeconomic status

- Some questions:
 - Does every economic, social, and cultural rights violation not have a disproportionate impact on socioeconomically disadvantaged groups?
 - What does a notion of non-discrimination on the basis of socioeconomic status add to existing economic, social, and cultural rights adjudication?
 - Would such a notion truly improve the situation of the most disadvantaged?

Non-discrimination and socioeconomic status

- **Example:** *Garib v. The Netherlands* [pending GC].
 - Refusal of housing permit because of requirement of previous residence in the designated area
 - Such a measure disproportionately affects socioeconomically disadvantaged groups. There are exemptions tied to income, and better-off groups will have a wider choice of areas
 - *Quid* discrimination on the basis of socioeconomic status? (Cf. Joint Dissenting Opinion to the Chamber judgment)

II. Incorporating socioeconomic considerations into anti-discrimination legislation

A. Public sector equality duties (UK)

Outlining the UK public sector equality duty

- Requires public authorities, as well as private bodies exercising public functions, to have due regard to the need to eliminate discrimination, advance equality of opportunity, and foster good relations. It is a procedural duty.
- Relevant protected characteristics: age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation.
- In practice: short of a merely bureaucratic function, the duty has proven effective to further substantive equality and correct disadvantage. In the UK, it constitutes today powerful grounds of judicial review. (Hickman, 2013)

The UK PSED — Case law

- *R (Brown) v SSWP*: ‘The imposition of a duty to have “due regard” to the various identified “needs” does not impose a duty to achieve results.’
- *R (Baker) v SSCLG*: ‘The weight to be given to the countervailing factors is a matter for the public authority concerned, rather than the court, unless the assessment by the public authority is unreasonable or irrational.’
- *Moore and Coates v SSCLG*: ‘Equality duties are an integral and important part of the mechanisms for ensuring the fulfilment of the aims of anti-discrimination legislation.’

The UK PSED — Case law

- **Example:** *Poshteh v. RB Kensington and Chelsea* [pending UKSC].
 - Ms Poshteh was born in Iran. She was imprisoned and during her imprisonment she was tortured. In 2009, she was granted indefinite leave to remain in the UK and she can now apply for accommodation to the relevant local authority.
 - She was offered permanent accommodation. However, the windows in the flat were circle-shaped and small, reminding her of her imprisonment and causing her a panic attack during the viewing of the property. She refused the offer. The respondent's housing duty thus ended.
 - Did the reviewing officer comply with the PSED with regard to Ms Poshteh's disability?

The UK PSED — Section 1, EqA 2010

Public sector duty regarding socio-economic inequalities

“ An authority to which this section applies must, when making decisions of a strategic nature about how to exercise its functions, have due regard to the desirability of exercising them in a way that is designed to reduce the inequalities of outcome which result from socio-economic disadvantage. ”

No commencement yet!

(and current political climate not favourable)

The UK PSED — Section 1, EqA 2010

- The PSED gives priority to groups who can gather under a ‘status’ label, to the detriment of those living in poverty more generally. This ‘skews the priorities of public bodies in favour of those who can cluster under the banner of a particular status.’ (Fredman, 2011)
- Potentially useful to mainstream the needs of socioeconomically disadvantaged groups into policy-making. However, the duty ultimately consists of having ‘due regard to the desirability’ to do so.
- Some authorities in devolved administrations and some local authorities already apply it.

The UK PSED — Section 1, EqA 2010

- Example: Newcastle City Council 2016-17 Budget, *Cumulative Impact Assessment*, p. 1.

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The UK PSED — Section 1, EqA 2010

- Example: Newcastle City Council 2016-17 Budget, *Cumulative Impact Assessment*, p. 9.

The implementation of the under-occupancy deduction or 'bedroom tax' as part of Housing Benefit reform means that tenants living in social rented housing deemed by the Government to be too large for their needs face reduced income, along with the rise in cost in living. This has impacted on some tenants' ability to balance their finances. Increases in the cost of food, fuel and rent have hit lower-income families hardest across the City. To mitigate the impact of this we propose to focus our welfare rights support, which provides specialist advice, to vulnerable council tenants to maximise their income, improve the stability of their tenancies and minimise evictions.

B. Socioeconomic status as a prohibited ground of discrimination

Socioeconomic status

- Incorporation of socioeconomic status as a prohibited ground of discrimination by law.
- Major concepts of anti-discrimination law would apply: direct and indirect discrimination, harassment, victimisation, sharing of the burden of proof, etc.
- *'Hierarchy of grounds'*: Discrimination on the basis of socioeconomic status may be protected to a lesser extent.
- Way forward?

Socioeconomic status — Domestic law

- Several EU Member States include socioeconomic status as a prohibited ground in domestic legislation, whether at the national/federal, or regional level:

AT	BE	BG	CY	EE	ES	FR	HR	IT	LT	PT	RO	SI	CZ	DE	DK	EL	FI	HU	IE	LU	LV	MT	NL	PL	SE	SK	UK
✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x

(EU MS which include ‘social standing’, ‘social class’, ‘social status’, ‘social descent’, or ‘social condition’ amongst the prohibited discrimination grounds)

Socioeconomic status — Examples

- Discrimination on the basis of the origin of an individual or family's income (i.e. whether they receive unemployment benefits; whether they receive social, family, or disability allowances).
- Example:

Appartement uniquement pour personne calme seule ou 2 max, très bon état, chauffage central, poêle à bois, rez de chaussée, Living 4mx7m, petite cuisine équipée, Douche, wc, 1 chambre 3mx3.5m, 1 pièce 3mx3.5m. 500 € Charges comprises: Eau, électricité, chauffage. Proche du Ravel, circuit de Francorchamps, Renseignements: 0475/68.23.39 Chômeurs et CPAS s'abstenir.

Source: 2ememain.be

Socioeconomic status — Examples

- Discrimination on the basis of the origin of an individual or family's income (i.e. whether they have a permanent employment contract or can prove stable income).
- **Example:**

“

A l'examen des annonces publiées, il est difficilement contestable qu'elles sont discriminatoires sur le critère de la fortune : elles exigent dans le chef des candidats locataires un contrat d'emploi à durée indéterminée, [...] ou des revenus du ménage conséquents.

”

Source: Tribunal de première instance de Namur (BE)

III. Conclusions

Conclusions

- Most international and European human rights instruments include criteria related to socioeconomic status when prohibiting discrimination.
- However, the notion of discrimination on the grounds of socioeconomic status remains underdeveloped and under-utilised both in jurisprudence and in doctrinal analysis.
- Such a notion raises some questions with regard to existing economic, social, and cultural rights adjudication.
- Two potential mechanisms to incorporate it into legislation:
 - As a public sector equality duty. Less restrictive, allows for flexibility, but risks becoming a ‘box-ticking’ exercise.
 - As a prohibited discrimination ground. More burdensome and rigid, yet possibly more effective. May be tempered (*‘hierarchy of grounds’*).

Thank you!

Juan Carlos Benito Sánchez

juan.benito@uclouvain.be

Twitter: *@jcbensan*

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